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ACTION

*Steinberg
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*cc: mugdan/Action
Uzylem. (w/lenel-)*

*Response due
8/4/06
Direct Reply*

June 30, 2006

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Hon. Alan J. Steinberg, Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

**Re: Cayuga Indian Nation of New York
Haudenosaunee Environmental Task Force**

OF COUNSEL:

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Dear Mr. Steinberg:

This firm represents the Cayuga Indian Nation of New York by and through its designated federal representative, Mr. Clint Halftown. I am writing concerning the Cayuga Nation's participation in the Haudenosaunee Environmental Task Force ("HETF").

As I had an opportunity to discuss recently with Regional Counsel Nina Dale, the Bureau of Indian Affairs recently reaffirmed Mr. Halftown's status as federally-recognized representative of the Nation and Timothy Twoguns' status as alternate federal representative. Attached is the May 31, 2006, letter from Franklin Keel, Eastern Regional Director, authorizing Mr. Halftown to contract with the federal government on behalf of the Nation.

As I discussed with Ms. Dale, the Cayuga Nation has to date jointly participated in the HETF program with the Tuscarora Nation and the Tonawanda Band of Seneca. Under this arrangement, U.S. Environmental Protection Agency grant monies for the Cayuga Nation have been administered for these three tribes by the Mohawk Nation and are being paid to an unrecognized, dissident faction of the Cayuga Nation.

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Hon. Alan J. Steinberg, Regional Administrator
June 30, 2006
Page 2

At the direction of the Cayuga Nation Council, we are undertaking a complete review of the Cayuga Nation's participation in the HETF program and are, by separate letter to you, requesting all documents relating to this matter.

By this letter, we are respectfully advising you that the Cayuga Nation will no longer participate in the HETF program. Once our review is completed, the Cayuga Nation intends to apply directly to the EPA for grant funds.

We will be providing additional information concerning the state of the Cayuga Nation in the near future. Should you have any questions regarding this matter, please contact the undersigned.

Thank you for your attention.

Very truly yours,

GREEN & SEIFTER, ATTORNEYS, PLLC

Daniel J. French

DJF/mm

388886_1.DOC

cc: Ms. Nina Dale, Esq.

Grant Jonathan

Clint Halftown

Timothy Twoguns

Gary Wheeler

Lee Alcott, Esq.

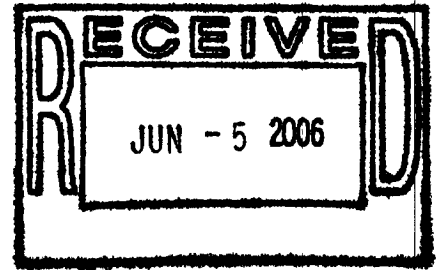


United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

MAY 31 2006



IN REPLY
REFER TO:

Office of the Regional Director

RE: Interior Board of Indian Appeals Order dated March 10, 2006, Vacating and Remanding Decision for Further Consideration, in *Timothy W. Twoguns and Gary Wheeler v. Eastern Regional Director* (Docket No. IBIA 05-60-A)

Members of the Cayuga Nation Council

Dear Sirs:

I have completed my consideration of the above referenced matter which concerns the status of Mr. Clint Halftown as the designated federal representative of the Cayuga Nation of Indians of New York. I am affirming and restating my decision of March 15, 2005, to continue the recognition of Clint Halftown as the designated representative of the Cayuga Nation in matters pertaining to the government-to-government relationship between the Nation and the Bureau of Indian Affairs (BIA). (For the sake of convenience, this position is referred to as the Nation representative). The following sets out my reasons for this decision.

I. Background

On March 15, 2005, this office issued a decision to recognize Mr. Clint Halftown as the designated federal representative of the Cayuga Nation of Indians (Nation). Subsequently, on March 17, 2005, Mr. Timothy Twoguns and Mr. Gary Wheeler filed an appeal of this decision with the Interior Board of Indian Appeals (IBIA). On January 28, 2006, the BIA received notice from the Nation Council that Mr. Halftown had been removed as Nation representative by the Council. In consideration of this new evidence, the Regional Director moved to remand the IBIA appeal back to the BIA for further consideration and to issue a new decision. There were no objections from the other parties to the request for a remand. Subsequently, on March 10, 2006, the IBIA vacated and remanded the decision to the Regional Director for further consideration. On April 3, 2006, this office provided the interested parties an opportunity to submit written comments and written rebuttals relative to this issue. The period for submitting these materials for consideration in this decision closed on May 1, 2006.

II. 2005 Decision

The March 15, 2005 Decision resulted from the January 28, 2005, notice received from the Nation Council that Mr. Halftown had been removed as Nation representative by the Council. Prior to January 28, the BIA had received notice from the Nation office that Mr. Halftown was to be the Nation representative to work with regarding the Nation's P.L. 93-638 Aid to Tribal Government contract with the BIA. The BIA began conducting government-to-government business with Mr. Halftown—primarily regarding contractual matters.

Before arriving at this March 17, 2005 Decision, the BIA looked to a number of factors involving the governmental framework of the Nation. These factors are described below.

The Cayuga Nation has approximately 500 enrolled members and does not have a reservation. Many of the enrolled members reside on the nearby Seneca Nation reservation. The Nation has an office located in western New York State from which it conducts day-to-day operations. Historically, the Nation has been a member Nation of the Haudenosaunee (Iroquois Confederacy).

The Nation does not have written governmental laws as it has been the custom to operate under oral traditions. It is apparent to the BIA that there is widespread disagreement among Nation leaders about what these traditional laws require of the Nation.

Traditionally, the Cayuga Nation has been represented by chiefs of the Heron, Bear, Turtle, Wolf, and Snipe clans. Each clan would have a clanmother charged with designating qualified chiefs to lead their respective clan. To be qualified, a candidate must be a full-blood, be a member of that clan and be knowledgeable regarding cultural traditions. A chief was appointed to his position for a lifetime term unless removed by his clanmother for cause. The chief would poll his clan during clan meetings to ascertain clan members' wishes regarding specific matters and when a consensus was reached on a matter it would be adopted by the full council. It has been represented to the BIA that the Snipe and Wolf clans are no longer active as there is no possibility of filling those clan positions.

In recent years, the Nation has been unable to fill vacancies within the Council due to the lack of qualified candidates. In the absence of qualified chiefs and in order to continue operating as a governmental unit, the Nation began using individuals in a position termed "seatwarmer" to fill vacancies within the clans. Historically, the concept of using seatwarmers was for the purpose of temporarily filling the positions until a qualified person could be found. Given their temporary status, they seemed to exercise less authority than chiefs and were not provided the prominent leadership roles assigned to chiefs. With the passing of the last condoled chief, Vernon Isaac in 2003, the Council consisted wholly of seatwarmers. In the absence of chiefs, it appears that the responsibility of governing has now fallen upon the Nation seatwarmers. It is represented to the BIA that there is a total of six seatwarmers—two seatwarmers from each of the active clans (Heron, Bear and Turtle clans).

There has been limited interaction between the Nation and the BIA over the years. It has also been the practice of the Nation to designate one Nation official to represent the Nation in its

dealings with the BIA. For many years that was Chief James Leaffe. When Chief Leaffe passed away, his position as Nation representative was assumed by Chief Isaac. When Chief Isaac passed away, there were no condoled chiefs left and seatwarmer Clint Halftown was designated as the Nation representative.

In light of the Departmental policy of maintaining a posture of non-interference in tribal government matters, the BIA has exercised caution not to unnecessarily delve into the internal workings of the Nation government. As a traditional Nation operating under oral traditions, the Cayugas have not made it a practice to provide the BIA with documentation of their governmental affairs and the BIA has respected the fact that the Nation has not governed by a written code of laws.

It should be noted that the Cayuga Nation customarily does not utilize regular council resolutions to provide notification of changes in leadership. It has been the practice of the Nation to provide notice of leadership changes by a letter signed by the Nation Clerk. By letter of May 5, 2003, Chief Vernon Isaac outlined the processes involved in the internal decision making of the Nation and the signatory authority of the Nation Clerk. According to the letter, Nation decisions are committed to writing on Nation letterhead signed by the Nation Clerk and affixed with the Nation seal.

For the most part, this interaction between the Nation and the BIA has involved the operation, administration and oversight of the Nation's P.L. 93-638 Aid to Tribal Government contract. Most of the communications primarily involve the Nation's office staff and BIA personnel. Since the Nation staff has consisted of only two positions and the contract amount has been under \$200,000 per year, there has not been a lot of communication between the BIA and the Nation over the course of the past several decades. Given these circumstances, BIA communications with the Nation chiefs were infrequent in the past.

Upon receiving notice dated August 11, 2003, from the Nation office that Mr. Halftown was to be the Nation representative to interact with regarding the Nation's Aid to Tribal Government contract, the BIA began conducting government-to-government business with Mr. Halftown-primarily regarding contractual matters.

At this juncture it was evident that the Nation Council was split into three factions: one faction comprised of William Jacobs, Chester Isaac and Samuel George represented by attorney Joseph Heath; the second faction comprised of Timothy Twoguns and Gary Wheeler represented by attorney Martin Gold; and, the third faction consisting of Clint Halftown, represented by his attorney Daniel French.

On January 28, 2005, this office received a letter signed by members of the governing council informing the BIA that Mr. Halftown was removed as the Heron Clan seatwarmer. Then on February 9, 2005, Mr. Gold wrote to inform the BIA that Clint Halftown's signature authority had been revoked and that Mr. Twoguns remained as the authorized signatory. On February 10, 2005, this office informed the attorneys that the BIA still continued to recognize Mr. Halftown and that the information provided would be reviewed. On February 11, 2005, this office

informed the attorneys that the Acting New York Field Representative would meet with the parties.

On February 17, 2005, the BIA conducted a hearing in western New York involving all parties to gather facts necessary to ascertain if the BIA should reconsider its recognition of Mr. Halftown as the Nation's designated federal representative. As a result of the information received at the hearing, it became clear that there was disagreement regarding the procedures to remove a Nation seatwarmer. It was also established that Nation decisions are arrived at through a consensus agreement of the Nation Council. However, Nation leaders were unable to define the meaning of consensus with regard to Nation decisions. Mr. Halftown responded that his removal has been invalid as it had not complied with Nation procedures and law. Mr. Halftown also stated that he was not afforded proper due process consideration in the matter.

With the lack of clear direction from the Nation on the question of whether or not Mr. Halftown's removal had been valid under Nation law, the Regional Director declined to accept the representation that Mr. Halftown had been removed as the Nation representative. The Regional Director's March 15, 2005 Decision not to accept the efforts to remove Mr. Halftown, was appealed to the IBIA by Mr. Twoguns and Mr. Wheeler.

III. Activities Occurring During the IBIA Process

On May 25, 2005, seatwarmers Jacobs, Isaac and George met with the Regional Director at the Eastern Regional Office to inform him that Mr. Jacobs and Mr. George had become chiefs of the Nation through official ceremonies conducted April 16, 2005. They asserted that since the Nation now had chiefs, there was no longer a need for the Nation to utilize seatwarmers. On July 18, 2005, this office wrote to seatwarmers George and Jacobs advising them that their positions were not recognized as the testimony provided at this meeting was contradicted by statements from other council members that were not present at the May 25 meeting.

While the Regional Director's decision was on appeal, Mr. Twoguns and Mr. Wheeler conducted a referendum which concluded on May 11, 2005, for a new, provisional government for the Nation. They submitted their election results to this office seeking affirmation of the provisional government. On June 9, 2005, the parties also met with the Regional Director at the Eastern Regional Office to present its case for the recognition of the provisional government. On July 18, 2005, this office advised Mr. Twoguns and Mr. Wheeler that their request for recognition was declined.

In the two separate July 18, 2005 letters, the Nation was offered assistance through mediation or other means of conflict resolution. To date, no mediation activities have taken place.

In the meantime, the pending case before the IBIA and the parties were waiting for the IBIA to make its decision

On January 17, 2006, the Regional Director received correspondence from Mr. Heath which informed the BIA that the Cayuga Nation Council had reached a consensus (five of six members) and withdrawn authority from Mr. Halftown to speak for the Nation in its government-to-

government dealings with the BIA. Mr. Heath also enclosed a document dated January 3, 2006 which was signed by five members, but which did not contain the Nation's seal, ordinarily affixed by the Nation Clerk. Subsequently, Mr. French submitted his counterargument to the actions taken by the Council.

In light of this new development, the Regional Solicitor's Office (BIA's legal representative before the IBIA) filed a motion to request the IBIA to remand the appeal to the Regional Director for further proceedings and decision. No objections to the request were filed by the other parties. On March 10, 2006, the IBIA vacated the appeal and remanded the matter to the Regional Director for further consideration.

IV. The Remand Process

On April 3, 2006, this office provided the interested parties an opportunity to submit written comments and written rebuttals relative to this issue. The issue now pending before the Regional Director is to determine who is the representative of the Nation in its government-to-government dealings with the BIA. The period for submitting these materials for consideration in this decision closed on May 1, 2006.

During the comment period, the Regional Director received a document from Mr. Daniel French on behalf of Mr. Twoguns and Mr. Wheeler indicating that they had withdrawn their agreement and consent to the January 3, 2006 council resolution which removed Mr. Halftown as the Nation's federal representative.

A. Issues Presented by Mr. Joseph Heath in the Reconsideration of the 2005 Decision

Mr. Heath submitted a letter of April 28, 2006, to supplement his previous letters of January 17, January 27, March 22 and April 17, 2006. Mr. Heath argued that the BIA should discontinue its recognition of Mr. Halftown in the interest of fulfilling its trust responsibility to protect the Nation's financial assets from being unilaterally mismanaged by Mr. Halftown; and, because Mr. Twogun's and Mr. Wheeler's reversal of their previously held positions regarding the status of Mr. Halftown was insufficient to overturn the January 3, 2006 resolution.

Mr. Heath asserts that evidence from audit findings support his contention that Mr. Halftown has engaged in numerous improprieties regarding federal program and Nation funds. The alleged improprieties involve two particular instances of improper handling of federal program funds under the control of the Nation as well as the failure of Mr. Halftown to secure the consent of other Council members prior to obligating Nation owned funds.

The specific charges for the federal program funds are that Mr. Halftown used program funds to pay for home improvements on his brother's house and other personal expenses; and, that program funds were improperly placed into a Nation business account. The alleged misuse of Nation funds involves obligating a significant amount of Nation funds without approval of other Nation Council members.

Mr. Heath argues that since the January 16, 2006 resolution removing Mr. Halftown was the result of a consensus decision of the Council, the only way to overturn that action would be by another consensus decision and that Mr. Twoguns' and Wheeler's reversals does not constitute a consensus action by the Council. Mr. Heath also maintains that permitting such reversals would jeopardize the stability of the Council as it would threaten the credibility of past and present Council actions in the eyes of outside governments.

Mr. Heath also questions the timing of the reversal – noting that Mr. Twoguns was hired by Mr. Halftown two days before the date of Mr. Twogun's statement reversing his position.

B. Issues Presented by Mr. Daniel French in the Reconsideration of the 2005 Decision

Mr. French responded by letters of April 28, 2006 and May 1, 2006 to Mr. Heath's arguments. Mr. French maintains that since Mr. Twoguns and Mr. Wheeler have withdrawn their support and consent of the January 16, 2006 resolution removing Mr. Halftown and since they represent two of the four original signatories authorizing Mr. Halftown to act as the Nation representative there can be no question that a consensus has not been reached to remove Mr. Halftown.

With respect to Mr. Heath's assertion that the BIA should remove Mr. Halftown as a consideration of its trust responsibility, Mr. French notes that there is no evidence of a financial crisis for the Nation and that problems concerning the Nation's administration of their contract with the BIA either have been resolved or are being adequately addressed. Mr. French further maintains that the intervention by the BIA called for by Mr. Heath would constitute an unwarranted and improper intervention into the internal affairs of the Nation.

V. Analysis of Issues Presented on Remand

A. Validity of the January 3, 2006 Resolution

Under normal circumstances the BIA would decline to become involved in a controversy internal to an Indian Nation. But because it is necessary for the BIA to identify a person or persons in a Nation leadership capacity in order to conduct government-to-government relations, a limited degree of BIA involvement is sometimes required.

On January 3, 2006, in an unsealed resolution, five of six members of the Nation Council resolved that Mr. Halftown was no longer the Nation's representative. However, in the interim, two of those five members reversed their positions and no longer support that prior resolution. If their reversal is given credence, the Council would stand as three members supporting Mr. Halftown's removal and three against it.

It is generally agreed by all parties that for a Nation decision to have validity a decision must be reached by a consensus of the Council members. The BIA would normally defer to the Nation to inform it as to what constitutes a consensus in terms of Council support. However, in this circumstance the Nation has not been able to inform the BIA as to specifically what constitutes a consensus for Nation governmental purposes. There has been the suggestion that the Council

needs to reach a position of having "one mind" before a decision can be affected. But it has also been stated that consensus can still be reached if one member of the Council remains a dissenter.

In view of this confusion, the BIA indicated in its March 17, 2005 decision that, although it could not determine what constitutes a consensus for the Nation, logic dictated that a consensus was not reached when less than a majority supported a particular position.

The BIA did not take a position with regard to the validity of the January 3 resolution because at that time its March 15, 2005 decision was on appeal to the IBIA. The BIA, however, considered it a significant action by members of the Council, warranting further investigation in light of conflicting statements by Council members. Now that the matter has been remanded to the BIA, the effect of the January 3 resolution may be considered.

Before considering whether the January 3, 2006 resolution constitutes a consensus decision of the Council and the bearing, if any, of the withdrawal of support by Messrs. Twoguns and Wheeler, the BIA first must decide whether it must make any determination of the validity of that Council action.

Questions of this nature would usually be determined by a tribal court or other tribal body charged with rendering a decision after considering applicable tribal law or tribal custom in lieu of tribal law. In this case, however, there is no Nation court and there is no clear Nation law on the subject.

Given other circumstances, the BIA would be averse to intervening into a situation whereby tribal leadership was unable, for whatever reason, to reach a decision and the BIA would be called upon to interpret tribal law. In this instance, not only is there a lack of tribal law to interpret, but the circumstances would require the BIA to make two decisions: if the January 3 resolution was an official action of the Council and, if so, what ramifications the later reversals of two members of the Council have on that action.

Given the complexity of this situation, the BIA is not inclined to render a decision which calls for the application of established guidelines where none are in evidence to apply. The BIA does not consider it appropriate to attempt to discern tribal law in this matter. Therefore, the BIA shall remain silent on the validity of the January 3, 2006 resolution and the subsequent disavowal of the resolution by Messrs. Twoguns and Wheeler. Inasmuch as the BIA has received no clear indication of tribal law in this matter, it has no basis upon which it could withdraw recognition of Mr. Halftown as the Nation's representative in its government-to-government relations with the BIA.

B. BIA's Federal Trust Responsibility

Mr. Heath has requested that the BIA withdraw its recognition of Mr. Halftown as the Nation representative, as an obligation on the BIA's part to uphold the federal trust responsibility toward the Nation. Mr. Heath supports this position with evidence that Mr. Halftown has engaged in improprieties with federal program funds and Nation funds.

The BIA has been aware for some time of these allegations and is aware that the proper authorities have been notified of the allegations with regard to federal program funds. BIA Eastern Regional Office staff conducted an on-site P.L. 93-638 contract review of the Nation's Aid to Tribal Government contract on March 14 – 16, 2006. The BIA staff conducted a careful review of the Nation's programmatic expenditures for the 2005 program year, and have identified material weaknesses in the Nation's financial accounting system. The BIA has also received a recent financial audit of the Nation's finances conducted by an independent accounting firm and is aware of the findings of that audit. The Nation staff, to its credit, has been very cooperative in these reviews and has taken the initiative in providing corrective action plans to address the problems identified by the program review and the financial audit.

There has been no evidence unearthed in the program review or the audit or in Mr. Heath's letters which would support consideration of discontinuing our recognition of Mr. Halftown on the basis of upholding our trust responsibility to the Nation.

With respect to Mr. Heath's argument that the BIA has a trust responsibility to withdraw recognition of Mr. Halftown because he is mismanaging Nation monies, it is noted that the Nation funds in question are not trust funds and therefore, there is no trust responsibility involved.

Please be informed that allegations of theft of Nation funds or property may be brought to the attention of the Federal Bureau of Investigation (FBI) Office serving that locality, as the FBI has jurisdiction to investigate these charges under the federal criminal code.

VI. Conclusion

As has been previously pointed out, the BIA's recognition of Mr. Halftown's status is limited to his role as the Nation Council member designated by the Nation Council to interact with the BIA. This recognition is based upon the wishes of the Nation as expressed in the August 11, 2003 letter from the Nation to the Regional Director. In response to this letter, the BIA has accepted that Mr. Halftown is authorized to negotiate and execute contracts and agreements with the BIA. In no circumstances has the BIA indicated to anyone that this document provides any more authority than that expressly indicated therein.

The degree of authority that a member of the Nation government may possess and exercise for Nation matters as described in Mr. Heath's letters of April 17, 2006 and April 28, 2006, is in the hands of the other members of the Council. As a sovereign Nation, it is vested with the exclusive right to determine what authorities it may possess or delegate to its representative(s). Mr. Halftown's powers as the Nation's designated representative are defined and controlled by the Nation, not by the BIA.

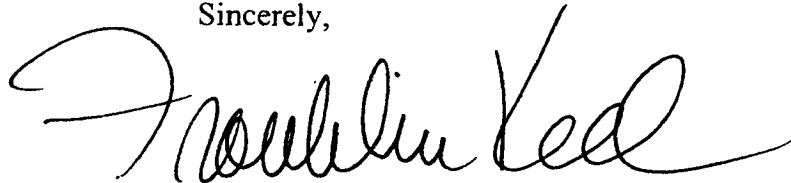
Based upon the foregoing, the BIA continues to recognize Mr. Halftown as the Nation's designated representative.

In closing, I note that this matter continues to impede efforts by the Nation leadership to address matters critical to the Nation and its members. I had previously urged the Nation Council to participate in mediation efforts to resolve this controversy and have been informed that this has not occurred. I want to again express my hope that all parties seek mediation or other alternate disputes resolution as a means of settling this dispute.

This decision may be appealed to the Interior Board of Indian Appeals (Board), 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-340 (copy enclosed). Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary-Indian Affairs, 4140 MIB, U.S. Department of the Interior, C Street, N.W., Washington, D.C. 20240; (2) each interested party known to you; and, (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you file a notice of appeal, the Board will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,



Director, Eastern Region

Enclosure

cc: Ms. Bernadette Hill
Ms. Inez Jimerson
Ms. Lena Pierce
Mr. Daniel French
Mr. Joseph Heath
Supt. Dean White
Interior Board of Indian Appeals